

1 Add 2 Cal. Code Regs. Section 18530.45 as follows:

2 **§ 18530.45. Legal Defense Funds – Local Candidates and Officers.**

3 (a) Application and Definitions.

4 (1) This regulation applies to the bank account permitted by Section 85304.5(a).

5 (2) For purposes of this regulation, the following definitions apply:

6 (A) “Legal defense funds” means money in the legal defense account.

7 (B) “Legal defense account” means the bank account established at a financial
8 institution located in the State of California pursuant to Section 85304.5(a).

9 (C) “Legal defense committee” means a committee formed pursuant to
10 subdivision (c) of this regulation.

11 (D) “Candidate” means a candidate for elective office in a local government
12 agency.

13 (E) “Officer” means an elected officer in a local government agency.

14 (b) Local Regulation of Legal Defense Account.

15 (1) Except as provided in paragraphs (2) and (3), this regulation shall govern the
16 legal defense account and legal defense committee established by a candidate or officer
17 under Section 85304.5.

18 (2) A local government agency may impose different requirements, including a
19 contribution limit, on a legal defense account and legal defense committee maintained by
20 a candidate or officer in its jurisdiction if its requirements regarding establishment of the
21 committee, recordkeeping, and reporting are at least as strict as those provided in
22 subdivisions (c), (e), and (f) of this regulation.

1 (3) If the local government agency does not enact local contribution limits
2 applicable to legal defense funds, the local requirements must also be at least as strict as
3 those provided in subdivision (i).

4 (c) Establishing the Legal Defense Account and Legal Defense Committee.
5 A candidate or officer who raises legal defense funds under this regulation shall deposit
6 the funds in and expend the funds from a bank account separate from any other bank
7 account held by the candidate or officer, including a campaign bank account and a legal
8 defense account for a state official and a candidate under Section 85304. The candidate
9 or officer shall establish a controlled committee for the legal defense account by filing a
10 statement of organization pursuant to Section 84101. The statement of organization shall
11 contain a description of the specific legal dispute or disputes for which the account is
12 established, and shall be amended pursuant to Section 84103, as legal disputes are either
13 resolved or initiated. The words “Legal Defense Fund” and the candidate’s or officer’s
14 last name shall be included in the committee name.

15 (d) Separate Accounts For Each Local Elective Office. The candidate or officer
16 shall establish a separate legal defense account and legal defense committee for each
17 local elective office to which the legal proceeding or proceedings relate.

18 (e) Required Recordkeeping and Audits. The candidate or officer, and the
19 treasurer of the legal defense committee, are subject to recordkeeping requirements
20 specified in Section 84104 and shall keep separate detailed accounts, records, bills, and
21 receipts, for each legal proceeding including documentation to support the basis and
22 timing, as set forth in subdivision (i)(3), for raising legal defense funds. The legal
23 defense committee shall be subject to audits under Chapter 10 of Title 9 of the

1 Government Code. An audit under Section 90001 of a candidate or officer, or any
2 controlled committee of the candidate or officer, shall include that candidate's or
3 officer's legal defense committee maintained during the audit period as described in
4 Section 90002(c).

5 (f) Reporting Requirements. The legal defense committee shall file campaign
6 statements and reports pursuant to Title 9 of the Government Code at the same times and
7 in the same places as it otherwise would be required to do for any other candidate
8 controlled committee in the jurisdiction in which the legal defense committee was
9 established.

10 (g) Contributions and Expenditures Not Subject to Certain Provisions. A
11 contribution to and an expenditure from a legal defense account under Section 85304.5 is
12 not subject to the provisions of Sections 85200 or 85201.

13 (h) State Legal Defense Accounts. A candidate or officer who is also a state
14 candidate or officer may establish a legal defense committee under Section 85304.

15 (i) Limitations. For the purposes of Section 85304.5 the following limitations
16 apply:

17 (1) Legal defense funds may only be raised in an amount reasonably calculated to
18 pay, and may only be expended for, attorney's fees and other related legal costs.

19 (A) "Attorney's fees and other related legal costs" includes only the following:

20 (i) Attorney's fees and other direct legal costs related to the defense of the
21 candidate or officer.

1 (ii) Administrative costs directly related to compliance with the requirements of
2 subdivisions (c) and (f) and the recordkeeping requirements of subdivision (e) of this
3 regulation.

4 (B) “Attorney’s fees and other related legal costs” does not include for example
5 expenses for fundraising, media or political consulting fees, mass mailing or other
6 advertising, or a payment or reimbursement for a fine, penalty, judgment or settlement, or
7 a payment to return or disgorge contributions made to any other committee controlled by
8 the candidate or officer.

9 (2) A candidate or officer may only raise funds under this regulation for defense
10 against a civil or criminal proceeding, or for defense against a government agency’s
11 administrative enforcement proceeding arising directly out of the conduct of an election
12 campaign, the electoral process, or the performance of the officer’s governmental
13 activities and duties. An administrative enforcement proceeding includes a discretionary
14 audit initiated under Section 90003, but not an audit initiated under Section 90001 until
15 the candidate or officer reasonably concludes that a government agency has commenced
16 an investigation based upon the audit. A candidate or officer may raise funds under this
17 regulation and Section 85304.5 to defend against an election contest conducted pursuant
18 to Division 16 (commencing with Section 16000) of the Elections Code, but may not
19 raise or spend legal defense funds for attorney’s fees and other legal costs incurred in an
20 election recount conducted pursuant to Chapter 9 (commencing with Section 15600) of
21 Division 15 of the Elections Code.

22 (3) Legal defense funds may not be raised in connection with a proceeding until
23 the following has occurred:

1 (A) In a proceeding brought by a government agency, when the candidate or
2 officer reasonably concludes the agency has commenced an investigation or the agency
3 formally commences the proceeding, whichever is earlier.

4 (B) In a civil proceeding brought by a private person, after the person files the
5 civil action.

6 (j) Remaining Funds. Funds remaining in the legal defense account following
7 payment of all attorney's fees and other related legal costs for which the account and
8 committee are established shall be returned or disposed of as follows:

9 (1) If the total amount of remaining legal defense funds is more than \$5,000, the
10 entire sum shall be returned to legal defense account donors on a pro rata basis.

11 (2) Remaining legal defense funds not required to be returned under subdivision
12 (j)(1) shall be disposed of for any of the purposes set forth in subdivisions (b)(1) through
13 (b)(5) of Section 89519. Remaining legal defense funds may not be transferred, except as
14 permitted under subdivisions (b)(1) through (b)(5) of Section 89519.

15 (k) Termination and Reopening of Committees. A legal defense account and
16 legal defense committee shall be terminated, and all attorney's fees and other related
17 costs returned or disposed of, within 90 days of the date the last legal dispute for which
18 the account and committee are established has been resolved. The local ethics agency, or
19 in the absence of an agency, the FPPC Executive Director, may for good cause, and
20 consistent with the purposes of Section 85304.5 and this regulation, extend the
21 termination date or permit the candidate or officer to reopen the account. The application
22 to extend the termination date or to reopen the account shall be in writing and shall
23 include copies of all supporting documents including copies of billing statements.

- 1 NOTE: Authority cited: Section 83112, 85304 and 85304.5, Government Code.
- 2 Reference: Sections 85301-85306 and 89519, Government Code.